

TRANSMITTAL LETTER

In re Application of
LARRY L. BRADFORD et al.

Serial No: 09/392,434

Filing Date: September 9, 1999

Title: POLYURETHANE FOAM CONTAINING
FLAME RETARDANT BLEND OF
NON-OLIGOMERIC AND OLIGOMERIC
FLAME RETARDANTS

Assistant Commissioner for Patents
Washington, D.C. 20231



Docket No: ACA 6124 PDUS

Examiner: R. Sergeant

Group Art Unit: 1711

CERTIFICATE OF MAILING

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deposited with the United States Postal Service
as First-Class mail in an envelope addressed to:
Assistant Commissioner for Patents,
Washington, DC 20231

on July 23, 2002

Lynn Brush
Lynn Brush

Sir:

☒ Transmitted herewith find the document(s) related to this application.

1. TRANSMITTAL LETTER IN DUPLICATE;
2. REPLY BRIEF IN TRIPLICATE;
3. CERTIFICATE OF MAILING; and
4. POST CARD

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☐ Applicant hereby petitions for an extension of time under 37 CFR 1.136 of:

☐ One Month (\$110.00)

☐ Two Months (\$400.00)

☐ Three Months (\$920.00)

☐ Four Months (\$1440.00)

☐ Additional claims are presented. The fee therefore is:

Claims Pending	Previously Paid For	Extra Claims	Rate	Fee
Total:	-	=	X \$18 =	\$
Indep:	-	=	X \$84 =	\$
First Presentation of Multiple Dependent Claims			+ \$280 =	\$
			Total	\$

The total fee believed due is **\$ 0.00**. Please charge this amount and any other fees which may be due (including filing fees under 37 CFR 1.16 and processing fees under 37 CFR 1.17) to Deposit Account No. 01-1350. If an extension of time is required but has not been requested above, Applicant hereby petitions for an extension of time sufficient for the attached document(s) to be timely. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Richard P. Fennelly

Richard P. Fennelly
Attorney for Applicant(s)
Reg. No. 25,677

Akzo Nobel Inc.
Intellectual Property Dept.
7 Livingstone Avenue
Dobbs Ferry, NY 10522-3408
Tel No.: (914) 674-5464

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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REPLY BRIEF

Lynn Brush
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This is in reply to the Examiner's Answer, dated June 19, 2002.

On page 5 of the Examiner's Answer, the Examiner has indicated that it would have been obvious to select any flame retardant from the list provided in the secondary reference to Keppeler despite the applicants' assertion that the list was so extensive as to not provide enough guidance to suggest a selection that would give rise to a prima facie case of obviousness. The Board is requested to reject this position for the reasons that follow.

Any person of ordinary skill in the art would note that the cited secondary reference, if considered with the primary art, does not provided any guidance that would suggest the particular

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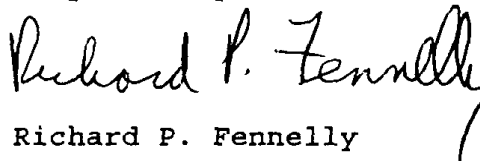
combination of flame retardants claimed and actually used by the applicants. At most, the secondary reference merely supplies a long laundry list of possible selections that might possibly be made in regard to the additional flame retardant without indicating particular selections that are to be made that would point in the direction of the applicants' choice. In fact, there actually appears to be some clear *negative suggestions* in the cited secondary reference of the claimed invention --- this reference shows a clear preference, as indicated on pages 5-6 of the Appeal Brief, for selection of "aminomethylated phosphonic acid esters", which are "phosphonates" (containing one phosphorus to carbon bond) rather than the recited "phosphate ester" component (that is devoid of any phosphorus to carbon bond).

From the foregoing, it is deemed by the applicants that the likelihood of the person of ordinary skill in the art producing the applicants' claimed combination from the disclosure of the cited secondary reference, if combined with either of the primary references, "would be about the same as the likelihood of discovering the combination of a safe from a mere inspection of the dials thereof", See In re Luvisi, 144 U.S.P.Q. 646, 650-651 (C.C.C.A. 1965), quoting Ex parte Garvey, 41 U.S.P.Q. 583, 584 (Pat. Off. Bd. of App. 1939. If anything, the secondary reference would suggest

selection of an "aminomethylated phosphonic acid ester", rather than the applicants' recited phosphate ester component as claimed component (a).

It is requested for these reasons that the Board hold that the basic combination of the two primary references with the secondary reference, which forms the basis of all art rejections herein, is improper.

Respectfully submitted,



Richard P. Fennelly
Attorney for Applicant
Reg. No. 25,677

Akzo Nobel Inc.
7 Livingstone Avenue
Dobbs Ferry, New York 10522-3408
(914) 674-5464
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